IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

NO. 73-726

COOPER STEVEDORING COMPANY, *Petitioners*

v.

FRITZ KOPKE, ET AL, *Respondents*

SUPPLEMENTAL BRIEF FOR RESPONDENTS

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To The Honorable The Chief Justice and the Associate Justices Of The Supreme Court Of The United States:

This Supplemental Brief is restricted to presentation of a late authority not available in time for inclusion in Respondents' brief in chief nor before this case was called for hearing on April 15, 1974.

ARGUMENT

The Courts of Appeals of three circuits have now concurred in holding that contribution is proper among joint tortfeasors in admiralty who share a common liability for the tortious act.

At the time this cause was called for hearing by the Court, the two Courts of Appeals which had considered

the question had rejected Petitioners' argument that this Court's decision in *Halcycon Lines v. Haenn Ship Ceiling Corp.*, 342 U.S. 282 (1952), prohibited any right of contribution among joint tortfeasors in admiralty outside the strict context of a case involving collision between two vessels. Both the Fifth Circuit, in *Watz v. Zapata Off-Shore Company*, 431 F.2d 100 (5th Cir. 1970), and *Horton & Horton, Inc. v. T/S J. E. Dyer*, 428 F.2d 1131 (5th Cir. 1970), cert. denied 400 U.S. 993 (1971), and the Second Circuit, *In Re Seaboard Shipping Corp. and Moran Inland Waterways Corp.*, 449 F.2d 132 (2d Cir. 1971), cert. denied 406 U.S. 949 (1972), had held that the "prohibition" of *Halcyon* does not apply to a situation where none of the tortfeasors possesses a statutory immunity from tort liability and the injured party could have proceeded against any of the tortfeasors and could have recovered damages from each. In its Petition for Writ of Certiorari in this case, Petitioner cited as contrary authority the holdings of three district court cases from the Ninth Circuit. (Petition, p. 9.) On April 18, 1974, two days after the oral argument of this case, the Court of Appeals for the Ninth Circuit reversed one of those cases relied upon by Petitioner and aligned the law of that Circuit with the views of the Second and Fifth. The Ninth Circuit's opinion of that date in *United States of America v. Standard Oil Company of Calif.*, ____ F.2d ____ (Nos. 72-1040, 72-1120, 72-1121), reversed the district court judgment in *In Re Standard Oil Company of Calif.*, 325 F.Supp. 388 (N.D. Calif. 1971).

In that case, an oil company, Standard, sought contribution from the United States for damages paid in connection with claims resulting from a disastrous gasoline fire in San Francisco Bay. A tug owned by Standard

had grounded one of the company's barges on an abandoned launching ramp in the Bay's Central Basin Area, and one of the barge's tanks had ruptured permitting a large quantity of gasoline to leak onto the waters. Thereafter, a Coast Guard patrol boat, attempting to inspect the situation, in some manner ignited the gasoline vapors. In the resulting conflagration, three members of the crew of the Standard tug and barge were killed, as were two Coast Guard sailors, and a third Coast Guard sailor was injured. There was extensive fire damage to the Standard barge and tug and to the Coast Guard patrol boat and assorted property damage to docks, rafts, floats, piers and other shore property.

Claims were filed against both Standard and the United States in their respective limitation proceedings by the estates of the deceased Standard employees. However, claim in behalf of the various property damage claimants were filed only against Standard. Standard and the United States filed claims against each other, and Standard also sought contribution or indemnity from the United States for the property damage claims which had been filed only against Standard.

Following a trial on the Government's petition, the district court, sitting in admiralty, found both parties to be equally and mutually at fault in causing the fire and the resulting damages. However, the trial court denied Standard any right of contribution for any amounts paid or to be paid to the various property damage claimants. That court relied upon *Halcyon* for the proposition that the maritime rule, like the common law, barred contribution among tortfeasors. It expressed disagreement with the reasoning of the Fifth Circuit in *Horton* and *Watz*.

The Court of Appeals agreed with the district court's determination of mutual liability but reversed its decision denying Standard contribution. The Ninth Circuit specifically disapproved the lower court's reading of *Halcyon*, pointing out that the holding of that case was compelled by the peculiar facts there presented, and characterizing the result as "an exception to the established admiralty doctrine of apportioning damages equally among mutual wrongdoers." It distinguished the *Halcyon* dicta as follows:

> "* * * Although the exception is stated broadly to include all noncollision maritime cases, the Court's reasons for denying contribution in that case were narrow. That is, where Congress had expressly immunized Haenn, as an employer of harbor workers, from suits by its employees for tort liability, the Court found it inappropriate, in effect, to evade this congressional policy by permitting a right of contribution against Haenn. Since no prior Supreme Court decision required that contribution be granted in noncollision cases, the Court refused to grant such relief in that case. *Halcyon, supra* at 285-87. But see *White Oak Transportation Co. v. Boston, Cape Cod & New York Canal Co.*, 258 U.S. 341 (1922).
>
> We agree with the Fifth Circuit Court of Appeals that regardless of whether *Halcyon* is strictly limited to its facts denying contribution from a joint tortfeasor who is statutorily immune from suit, or whether its broad language concerning all non-collision maritime actions is considered dictum, the *Halcyon* doctrine is inapplicable here. *Horton & Horton, Inc. v. T/S. J. E. Dyer*, 428 F.2d 1131, 1134 (5th Cir. 1970), cert. denied, 400 U.S. 933 (1971). In this case, those individuals who suffered property damage filed claims first only against Standard, probably because of the great likelihood that it would be held responsible for such losses. But,

had any of these claimants foreseen that the United States similarly would be held liable, undoubtedly they would have made these claims against the Government, just as the representatives of the Standard crewmen did.

This situation is unlike that in *Halcyon* where the injured employee was precluded by statute from suing his employer. Here, the tort liability of the United States was not limited by statute; on the contrary, the Government's immunity has been expressly waived for its negligence in this type of case. Under these circumstances, we see no reason for not requiring the United States to contribute toward the damages resulting from its negligent conduct. Therefore, in this noncollision admiralty case where damages are the result of mutual wrongdoing, we hold that contribution will lie where no statute precludes recovery from the joint tortfeasor against whom contribution is sought. *In re Seaboard Shipping Corp.*, 449 F.2d 132, 138-39 (2d Cir. 1971), cert. denied sub nom. *Seaboard Shipping Corp. v. Moran Inland Waterways Corp.*, 406 U.S. 949 (1972); *Horton & Horton, Inc., supra; Watz v. Zapata Off-shore Co.*, 431 F.2d 100 (5th Cir. 1970)." (Pages 11-12 of slip opinion)

The Ninth Circuit's decision is significant in the first instance because it leaves the law uniformly settled in every circuit in which the question has been raised concerning the right of contribution among joint tortfeasors in admiralty. Moreover, it underscores the complete lack of authoritative support of Petitioner's position. Petitioner would have this Court eradicate a well-established principle of admiralty jurisprudence on the basis of a construction of this Court's dicta in *Halcyon* which has been explicitly rejected by every appellate court before which it has been urged.

Furthermore, the *Standard Oil* case provides strong testimony for the equitable aspects of the maritime doctrine of contribution. In that case, the claimants chose to pursue their causes solely against Standard, preferring not to sue the Government. Under the district court's holding, Standard would have been required to bear the entire burden of liability for a disastrous loss though the fault of the government was an equally significant cause of the loss. Even had the claimants sued both tortfeasors, there would have been a clear incentive on the part of each to contribute toward settlement rather than suffer a judgment of joint and several liability which could have been satisfied in whole against either. The absence of any right of contribution unconscionably vests in the claimant the arbitrary power to make any one of multiple tortfeasors the "target" defendant upon which liability for all damages may be affixed.

The same situation is presented in the case at bar, where the plaintiff, Sessions, sued only Respondents, though he could also have sued Petitioner directly. The trial court below determined that Sessions' damages were occasioned by the equal fault of Petitioner and Respondents. To deny a right of contribution in such a circumstance would be unreasonable and inequitable, and for this reason admiralty courts have always afforded the remedy of contribution in every case of maritime tort.

CONCLUSION

This Court should affirm the judgment of the United States Court of Appeals for the Fifth Circuit, decreeing that Respondents recover contribution from Petitioner in respect of the damages awarded Troy Sessions by the District Court, as in accord with the well-established ad-

miralty doctrine of contribution among joint tortfeasors. Respondents pray in the alternative (should contribution be improper in the present case) for a rendition of judgment that they recover full indemnity for such damages, together with their reasonable attorney's fees and expenses incurred in the defense of Sessions' claim.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On this _____ day of May, 1974, a true and correct copy of the foregoing was served upon counsel for Petitioner by depositing same in a United States Post Office or mail box, with first class postage prepaid, addressed to Joseph D. Cheavens, of Baker & Botts, 3000 One Shell Plaza, Houston, Texas 77002.

Bruce Dixie Smith